

Kosovo - An Atypical Parliamentary Republic

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Abstract

The topic of this comparative study is the republican character of the system of governance in Kosovo. In the public discourse and political communication, as well as in academic discourse Kosovo is considered a Parliamentary Republic, based on the principle "of the separation of powers and checks and balances between them." Although the constitutional definition of the relationship between the executive and legislative favors parliamentary republicanism, the constitutional powers of the president, the government and especially the constitutional and political power of the prime minister, significantly weaken the parliamentary character, in favor of a semi-presidential system. However, neither the current theories of government, nor constitutional provisions can rank Kosovo among semi-presidential systems, or pure parliamentary systems. Comparisons of competence powers relations in Kosovo, with similar relations and competences of the countries of the region and beyond, testify to the specific nature of parliamentary democracy in Kosovo. It is precisely the comparison of the Kosovo constitutional-legal system of governance with similar systems and theoretical analysis of parliamentary models facing Kosovo model which will be the basis of support of the hypothesis that Kosovo is not a typical parliamentary republic.

Keywords: Kosovo; parliament; republic; prime minister; government

Introduction

By constitutional definition Kosovo is "a democratic Republic based on the principle of separation of powers and checks and balances between them."¹ This definition defines only the basic forms of government, leaving its type explicitly undefined. It has perhaps remained alongside the road that the country is crossing towards the perfection of governance.² Or, by keeping its republican system of government, its shape has remained flexible and depending on the ratio of political forces in the country, on the basis of which and within this framework, it can be transformed, sometimes closer to a parliamentary republic and at other times closer to a presidential republic.

¹ Article 4, Constitution of the Republic of Kosovo, Official Gazette No. 20 (05.08.2015).

² See: Aurela Anastasi, "Historia e të Drejtës Kushtetuese në Shqipëri 1912-1939", Tirana, 2007, p. 67.

In the political discourse and for political needs, and public communication, Kosovo is considered a parliamentary republic. Constitutionalists, however, disagree with this statement defending the position that Kosovo is not only a clear parliamentary republic, but, moreover, it has a mixed system of governance resembling a semi-presidential system. According to the constitutionalist Arsim Bajrami, there are at least two facts that support this conclusion. First, the executive power of the President in some areas, and the his / her foreign affairs role and secondly the fact that the Constitution does not allow the supremacy of Parliament in relation to other powers.³ In partial support of this conclusion may be the comparative political theory, within which various forms of parliamentary republic are treated. As we will see later, the semi-presidential system is distinguished by the fact that the President is elected by the people and carries executive powers, which he performs independently or in cooperation with the Government. In the case of Kosovo, the President also has executive powers, some of which he/she exercises together with the government and some of them independently, but is elected by the Assembly. So, the President of Kosovo has only parliamentary legitimacy, which is much weaker than popular legitimacy.

In addition to this designation, the opposition political vocabulary and within the “war” for power in different countries and cases, the Republic of Kosovo is described as a “governmental republic.”⁴

The proponents of this discourse have been using this label alluding to the degradation of parliamentarism in favor of the government, or at best prime minister. They even believe that “Kosovo is a parliamentary republic with Parliament as its body with its high political and legislative representatives,”⁵ and, therefore, the Government, or Prime Minister, are under constant dependence from the Assembly, without autonomy of action. This definition is actually a reflection of the determination of their ideological program for a “strong parliamentarism,”⁶ which so far was only used for political purposes without academic treatment. Being a political opposition vocabulary, it is based entirely on the assumption that Kosovo is a typical parliamentary republic and that therefore the government attempts to dominate in relation to parliament have to be judged. Comparative political theory and comparative constitutional and legal study of the system of governance in Kosovo can only recognize the term “governmental republic”, but not the assumption of Kosovo as a typical parliamentary republic.

³ Arsim Bajrami, Sistemi kushtetues i Republikës së Kosovës, Prishtina, 2012, p. 169.

⁴ Dardan Sejdiu: Kosova, republikë qeveritare, <http://www.telegrafi.com/lajme/sejdiu-kosova-republikë-qeveritare-2-27675.html> (15.10.2015) dhe Albin Kurti në tubimin me qytetarë në Mitrovicë (15.11.2014) <http://www.gazetaexpress.com/lajme/kurti-pdk-ja-deshiron-republikë-qeveritare-59834/?archive=1> (15.10.2015).

⁵ See: Albin Kurti, Ekonomia e Republikës, 12.01.2012, downloaded from: <http://www.vetevendosje.org/ekonomia-e-republikës/> (17.10.2015).

⁶ See: Alternativa qeverisëse, 2013, Levizja Vetëvendosje, p.11.

A typical parliamentary republic is characterized by the dominance of the legislative powers over the executive, i.e. domination of parliament in relation to the government and head of state. In all interrelated relations of power, parliament is the final arbiter or otherwise it receives more than it gives, as an ultimate state enforcer of people's sovereignty. Clearly Kosovo is far from this classic parliamentary model. In this kind of republic, separation, balance and mutual control of powers is not the basis of the government, or more precisely not its main characteristic. Rather, they are closer to the "unity government" in favor of Parliament.

In fact, in modern parliamentary republics there is separation of powers, but not necessarily balance. In this type of separation of powers, sometimes it is the government that dominates (UK, etc.), and sometimes it is the head of state (i.e. France) the sometimes it is the Parliament (Italy, etc.). Alternatively, the principle of the so-called "soft separation" of powers in the case of parliamentary republics is applied.⁷ The question is as to where Kosovo is on this constitutional and legal theoretical framework? The answer should be sought in a comparative political analysis and comparative study of the constitutional-legal position in relation of the executive with the legislative in Kosovo, as compared to the same relation of the executive and legislative branches in some of parliamentary republics in the region and beyond.

Comparison and theoretical definition of the form of government of Kosovo

Starting from the foundation of the theory of separation of powers to the present, its core values are applied in different forms and different ways and partly could be the basis of full and clear separation of powers, while the dominating principle of separation of soft separation, necessary control and possible balance of powers prevailed.⁸

On the basis of this theory, in countries in which the sovereignty formally but also practically belongs to the people, there is both a parliamentary democracy and presidential democracy or parliamentary and presidential republics respectively. This separation is based on the role and function that the head of state has in relation to the legislative or the executive constitutional powers that the president has in one or the other system respectively.

As a result of combining the elements of one system with another system six other forms of executive government have been created and functioning, in which the

⁷ See: Arsim Bajrami, *Parlamentarizmi (Aspekte krahasuese)*, Prishtina, 2010, p.86.

⁸ Theory of separation of powers was initiated by the English philosopher John Locke and was elaborated by the French philosopher and jurist Montesquieu in his work "On the Spirit of Law" (1748); Geoffrey Brennan and Alan Hamlin: "Democratic Devices and Desires", Cambridge University Press, 2004, pp. 211-233.

President enjoys various powers.⁹ The most characteristic form of the system of mixed, which is treated most often in political and juridical studies in recent years is precisely the form of the semi-presidential system of government, as it seems to have been most useful in the early stages of transition systems and political regimes during the '90s.

Viewed according to a classification¹⁰ by the Dublin University Professor, Robert Elgie, there are about 60 countries in Europe, Africa, Latin America and Asia to apply this form of the republican semi-presidential governance, which in one way or another have been influenced by the French system of semi-presidential republic, as the first model of this type of political system.

Agreeing with the definition and functioning, more and less successful semi-presidential system, as a third kind of republican government, various authors have valued and emphasized the system. Therefore, the governance practices of different countries and for different reasons have created subdivisions or subspecies of the semi-presidential system.¹¹ Depending on the powers of the President in relation to Prime Minister researchers have defined two more subdivisions of the semi-presidential system, which are of particular interest for our work, as it provides the theoretical framework of analysis and definition, rather theoretical system of governance in Kosovo. Both the political practice and legal constitutional basis of governance in Kosovo imply that the exact form of republican government in Kosovo should be sought somewhere between parliamentarism and semi-presidentialism.

The first subdivision is the system in which the Prime Minister is the chief executive authority, and the President has secondary executive authority, even though they both have the legitimacy of the vote of the citizens. Indeed, while the legitimacy of Prime Minister should be reconfirmed by Parliament, in this kind of subdivision - subsystem, the President attains legitimacy by direct vote of the citizens. Typically for this system it is the Prime Minister who has no subordinate relation to the President and, together with his cabinet responds politically only to the Parliament. Otherwise this sub-type is referred to as "Prime Minister's presidentialism."¹² So the government's mandate depends exclusively on the trust of the Parliament. Although the Kosovo executive

⁹ On the forms of mixed systems see: Arend Lijphart, "Patterns of democracy: government forms and performance in thirty-six countries", Yale University Press, 1999, pp.118-224.

¹⁰ Distribution is primarily on the basis of the definition of Maurice Duverger who made semi-presidential system. According to him, it will be called a semi-presidential system that which the president elects directly by the people, it has great powers and a prime minister is elected by parliament with executive power and that depends on the parliament. Giovanni Sartori, however, even more defines the characteristics of the semi-presidential system emphasizing the interdependence of president and prime minister. See: Robert Elgie: "Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies", in Taiwan Journal of Democracy, Volume 3, Nr.2:53-71.

¹¹ On kinds of sub-systems of semi-presidential system see: Matthew Soberg Shugart, Jon.M.Carey: "PRESIDENTS and ASSEMBLIES - Constitutional Design and Electoral Dynamics", CAMBRIDGE UNIVERSITY PRESS, New York, 1992, pp. 21-25.

¹² See: Robert Elgie, Semi-Presidentialism-Sub-Types and Democratic Performance, Oxford University Press, 2011, p. 28.

features converge with many of the elements here, Kosovo cannot be part of countries with this kind of system, for the simple fact that the Kosovo President is elected by Parliament and not directly by the citizens.

The second subdivision of this system is the semi-presidential system, in which the President has increased executive powers, while the Prime Minister is politically responsible to the President, but also to the Parliament. Shugart and Carey call it “President’s parliamentarism.”¹³ Even in these systems, although stipulated by the constitution and other organic legislation in the same way in different countries, the governing practice and parliamentary political processes can influence the President to be a strong political authority resembling the clear presidential system.¹⁴ Kosovo cannot be part of that system either as the President, with all his/her executive powers, does not control the government, and the impact of government could be made only on the basis of cooperation, but not in relation to subordination.

As mentioned in the above, the practical aspect of the seven-year governance in Kosovo and the legal and constitutional basis of governance instruct that the republican form of government in Kosovo be sought somewhere between parliamentarism and semi-parliamentarism. In this effort, precious help may come from comparative analysis of Giovanni Sartori on the structure of executive power and relations within the main factors of that power (President-Prime Minister). Sartori calls the parliamentary system, in which the Prime Minister has great executive power in relation to the Parliament a semi-parliamentary system. On the basis of the power of the Prime Minister and within the semi-presidential system he distinguishes three situations:

First, the situation in which the Prime Minister is the first above unequals (England).

Second, the situation in which the Prime Minister is the first among unequals (Germany).

Third, the situation in which the Prime Minister is the first among equals, in most parliamentary systems.¹⁵

Political and constitutional power of the Prime Minister in relation to the Assembly and President gives reason to admit Kosovo among countries such as England, where the Prime Minister is “the first above unequals”. Perhaps Germany has a powerful Prime Minister, but the fact that cabinet ministers are appointed and dismissed by the President on the proposal of the Prime Minister brings the Prime Minister of Kosovo

¹³ Idem.

¹⁴ A typical example is the French President, whenever the National Assembly is dominated by the parliamentary majority party which belongs to the President. In contrast is the situation of so-called cohabitation or political coexistence.

¹⁵ Juan J. Linz and Arturo Valenzuela, *The Failure of Presidential Democracy*, Comparative Perspectives, The Johns Hopkins University Press, Baltimore and London, 1994, p. 100.

closer to that of England, even in a better position, as he can replace members of government without the consent of the Parliament.¹⁶

Under this theoretical framework and comparisons of political and constitutional power of the President and Prime Minister, Kosovo can be considered a semi-parliamentary republic, according to Sartori's concept, or, if we consider only the power of the Prime Minister, a Prime-Ministerial Republic or, if we consider the two main actors of executive power, it could also be called an Executive Republic.

President of the country was expressly defined thirty competences¹⁷ that exceed the usual powers of the President in clear parliamentary republics. Eleven of these powers are of an executive character, some are ceremonial and some of them carry interdependent powers, the exercise of which requires the cooperation of the President with other institutions such as Parliament, Government, Judicial Council, Prosecutorial Council, etc.¹⁸

Comparison and constitutional definition of the form of governance in Kosovo

Comparative Determination of powers of the executive power draws interesting conclusions on the form of government in Kosovo. The comparison here has to do with some of the Eastern European and Western parliamentary republics taking into account the constitutional powers of presidents and prime ministers in particular.

If one compares the constitutional powers of the President of Kosovo with the authority of the President of Albania and that of Greece, it appears that Kosovo has a legally very strong president. Both states are typical parliamentary republics, in which, as in Kosovo, the president is elected by parliament and has no significant executive power or significant participation in the legislative power. Without going deep into each jurisdiction separately and leaving aside the common characteristics, (Supreme Commander of the armed forces, powers in emergencies, the right of suspension veto, clemency, appointments, decorations, etc.), we see that the President of Kosovo has the constitutional power to represent the country at home and abroad, over the management of foreign policy, the right to propose constitutional amendments, and the right to propose laws.¹⁹ These powers are not defined nor explicitly or indirectly encountered neither in the Constitution of Greece²⁰ or that of Albania,²¹ and in this

¹⁶ Constitution of Kosovo, Article 94, Item 4.

¹⁷ See: Constitution of the Republic of Kosovo, Article 84.

¹⁸ On President's powers and their classification see: Prof. Dr. Arsim Bajrami, "Sistemi Kushtetues i Republikës së Kosovës, "Artini", Prishtina, 2012, pp. 276-282.

¹⁹ See: Constitution of Kosovo, Article 84.

²⁰ Constitution of Greece, Articles 35 to 50.

²¹ Constitution of Albania. Articles 92. In Albania President can rise issues to Constitutional Court, but not Constitutional amendments: see Article 134

respect, the President of Kosovo turns out to be the most powerful among the leaders of these countries. On the other hand, something that especially draws attention to is the relationship of the President with the Prime Minister or the government respectively. This comparative report issued by the President of Kosovo much weaker than they are two other presidents, because in the case of Kosovo, there is no significant impact on the formation of the government, or the appointment and dismissal of ministers. This comparative relationship issued makes the President of Kosovo much weaker than the two other presidents, because in the case of Kosovo he has no significant impact on the formation of the government, or the appointment and dismissal of ministers. His/her only role is authorizing a the one who will form the government, after the proposal by the political party or coalition holding the majority in the Assembly. After the government and its program gain their legitimacy by the Parliament, the President has no formal influence over the composition of the government. Unlike the cases with Albania and Greece. In both parliamentary republics,²² the President appoints and dismisses ministers on Prime Minister's proposal.²³ For more, in Albania, the Prime Minister, Deputy Prime Minister and cabinet ministers, before taking office, take an oath before the President of the Republic.²⁴ The situation is the same in comparison with the heads of state of Germany and Italy, as two typical parliamentary states, in which the role of head of state on the composition of the government does not end once the government is elected, as is the case with Kosovo.

Powers of the President of Kosovo are comparable to the powers of heads of parliamentary republics in which the President is elected directly by the people. In relation to the latter's powers, he even possesses major powers. As an example, the Croatian president, except for standard tasks of presidents in parliamentary republics, has authority in the field of foreign policy and security. He/she is the Commander of the Armed Forces and a factor in the creation and implementation of foreign policy, but also in the management of the security services. However, his/her role is on coordination, not subordination, and this is expressly stated in the Croatian Constitution.²⁵ In the case of Kosovo, however, the President, according to the Constitution, "leads the country's foreign policy."²⁶ That is what makes the Kosovo President to be legally more powerful than the Croatian President and even more powerful than the Macedonian or Montenegrin President, although they have popular legitimacy. The latter, in fact, have authority in matters of security policy, as chairs of national security councils, while in Kosovo, this power is exercised by the Prime Minister. However, the influence of the President over the Council is relative, as this body is of a consultative character

²² It is worth mentioning the fact that these two states have by constitution expressively determined as Parliamentary Republic. See Article 1 of Constitution of Greece and Article 1 of Constitution of Albania.

²³ Constitution of Greece, Article 37, Constitution of Albania, Article 98.

²⁴ Idem, Article 99.

²⁵ Constitution of Croatia, Articles 99 and 103.

²⁶ Constitution of Kosovo, Article 84, Item 10.

and it is composed of Prime Minister and at least four ministers representing the most significant portfolios of the state.

Powers of the President of Kosovo in the above and other comparisons justify the impression that Kosovo is not only an atypical parliamentary republic, but it bears highlighted elements of the semi-presidential system. This is what Kosovar authors believe as well, excelling in the field of constitutionalism.²⁷ On the other hand, comparative powers of the Prime Minister are the ones that leave no doubt about naming dilemma in the form of governance in Kosovo. There is also a dilemma whether one may call it a "Prime ministerial Republic" based solely on the authority of the prime minister, or call it an "Executive Republic", based on the powers of the Prime Minister and the President vis-à-vis Parliament.

Based on the constitutional powers, the Prime Minister of Kosovo can be ranked among the most powerful prime ministers of the world. In Sartori's division, he could be ranked within a system in which "the Prime Minister is the first among the unequal."²⁸

It is precisely the powers of the Prime Minister that provide proof for the hypothesis of an atypical parliamentary character of the Republic of Kosovo and may also promote the labeling of a "prime ministerial republic". In constitutional and legal terms, the position of Kosovo's Prime Minister is the same as the position of the British Prime Minister, which is considered as the most powerful in comparative political theory. Moreover, one may also find similarities with the German "chancellor democracy".²⁹ However, party pluralism and proportional electoral system in Kosovo, compared to the two-party and majority English system see to it that the constitutional power of the Prime Minister be relativized by the relationship among the parliamentary political forces. Regardless of this, the constitutional authority enables dominance in relation to the legislative power and in relation to President's authority.

One of the special powers, which is not encountered in any parliamentary republic being a typical presidential feature is the right of the prime minister to "replace members of the government, without the consent of the Parliament."³⁰ Thus, regarding the composition of the government, the Prime Minister is independent both in relation to the President, as explained above, as well as in relation to the Assembly. On the day of the election of the Prime Minister and the approval of the government program, the Assembly gets a weakened position of influence in the composition of the government. Kosovo's Constitution does not speak of individual ministerial responsibilities, but of the responsibilities of the prime minister and government.

²⁷ Arsim Bajrami, *Sistemi kushtetues i Republikës së Kosovës*, Prishtina, 2012, p.169.

²⁸ Juan J. Linz and Arturo Valenzuela, *The Failure of Presidential Democracy, Comparative Perspectives*, The Johns Hopkins University Press, Baltimore and London, 1994, fq.100.

²⁹ On Chancellor Democracy see: Manfred G. Schmidt, *Teoritë e demokracisë*, Botimi Universitar, Botart, 2012, Tirana, pp. 298-299.

³⁰ Constitution of Kosovo, Article 94, Item 4.

By comparison, let us mention cases of Albania, Croatia, Macedonia, Slovenia and Montenegro.

In Albania, the President decrees within seven days the appointment and dismissal of ministers, on the proposal of the Prime Minister. The decree is reviewed by the Assembly within 10 days.³¹ "Reviewing of the decree is not limited to its formal control, but also substantial one, as it is an act of political control similar to the one exercised in the context of a confidence or non-confidence motion."³² So, the adoption of the President's decree by the Parliament is crucial and it shows the political power of Parliament in relation to government's appointments.

In Slovenia, the ministers are proposed by the Prime Minister and appointed by the Assembly. Even before being appointed they are interviewed by an Assembly commission.³³ Slovenian Constitution expressly regulates the motion of no confidence, not only to the government as a whole, but also to ministers individually, according to which, if the motion of no confidence passes by an absolute majority, then the government is dismissed, or the minister respectively, against whom the motion has appeared.³⁴

In Montenegro, also, the Parliament plays a key role in the appointment and dismissal of ministers. The Prime Minister cannot appoint or dismiss ministers without the consent of Parliament.³⁵

In Croatia, however, the appointments procedure and discharge of ministers is even more interesting. The Prime Minister, after taking confidence vote from the parliament decides the appointment of ministers with a verdict signed jointly by Parliament.³⁶ Government ministers undergo this motion individually and in the case of no confidence vote against, the Prime Minister may propose another candidate, or resign with government.³⁷

Also, the Prime Minister of Macedonia does not have a free hand to appoint and dismiss his ministers at will. He may address the Assembly with a proposal for dismissal, and then the Assembly decides. If the removal of 1/3 of ministers is required, then a new voting procedure for new government takes place.³⁸

³¹ Constitution of Albania, Article 98.

³² See Decision of the Constitutional Court of Albania, No. 6, dt. 18. 01. 2002.

³³ Constitution of Slovenia, Article 112.

³⁴ Idem, 118.

³⁵ Constitution of Montenegro, Article 105.

³⁶ Constitution of Croatia, Article 110.

³⁷ Idem, Article 116.

³⁸ Constitution of Macedonia, Article 94.

Hereby, the conclusions of comparisons over the constitutional authority of the Prime Minister of Kosovo with government ministers with the authority of the prime ministers of some of the parliamentary republics, even those in which the president has popular legitimacy, support the view that in Kosovo, the institution of the Prime Minister politically and even legally dominates in relation to the powers of the President and in relation to the legislative power.

Conclusions

The form of government in Kosovo is predominantly an international projection, based on consensual political theory, whereby the main aim of the co-governing communities in Kosovo. In the spirit of this theory the Constitution has also been designed, taking into account multi-ethnic co-governance and potential co-governance of the key political factors of the time. Hence the form of government in Kosovo is specific compared with similar forms of government and as such it is still a democratic test. This form of government cannot be called a typical parliamentary republic, as the powers of the President and especially the Prime Minister diminish the power of the Parliament and disrupt the balance of powers.

Based on these competencies and compared with comparative political theory, the Republic of Kosovo is rather an executive republic, more so than a parliamentary republic. Perhaps it could fall within the semi-parliamentary republics of Sartori. It could even be called a Prime Ministerial Republic similar to the German chancellor democracy. However, this form of government remains to be tested and shaped in the context of democratic developments, which can also lead to a semi-presidential republic, which is a form of government characteristic of democracies in transition.

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